

UT 01-5

Tax Type: Use Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

DEPARTMENT OF REVENUE	)	No.	00 ST 0000
STATE OF ILLINOIS	)	IBT	0000-0000
	)	NOA:	00 00000000000000
v.	)		00 00000000000000
	)		00 00000000000000
ABC SERVICE	)		00 00000000000000
	)		00 00000000000000

RECOMMENDATION FOR DISPOSITION

This matter comes on for hearing pursuant to ABC Service's ("ABC" or the "Taxpayer") protest of the referenced Notices of Assessment 00 00000000000000 (December 1995); 00000000000000 (September 1996); 00000000000000 (December 1997); 00000000000000 (June 1998); and 00000000000000 (December 1998) proposing to assess late filing penalties for the months designated for taxpayer's failure to file its Tire User Fee returns within thirty days following the Department's Notices of Tax Liability issued to taxpayer for the designated months. In its protest of the late filing penalties, taxpayer requests their abatement due to reasonable cause. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department issued to taxpayer Notices of Tax Liability assessing tax, non-filing penalty and interest, based on taxpayer's failure to file its Tire User Fee returns for the months of December 1995, September 1996, December 1997, June 1998 and December 1998. Department Ex. No. 1
2. Taxpayer failed to file the required returns within the thirty days that, by statute, would have prevented the imposition of a \$250 late filing penalty as provided under the Uniform Penalty and Interest Act. Department Ex. No. 1; Tr. pp. 8, 10, 12

Conclusions of Law:

The penalties at issue were assessed pursuant to section 3-3 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-1 *et seq.* (hereinafter the "UPIA"). The UPIA provides that penalties can be abated upon a showing of reasonable cause (35 ILCS 735/3-8) and taxpayer makes its request based upon this provision, and, also avers that the amount of each penalty assessment is too severe.

Department regulation states that reasonable cause is to be determined on a case by case basis taking into account all of the facts and circumstances. 86 Ill Adm. Code, ch. I, sec. 700.400(b). This provision indicates that it must be determined to what extent the taxpayer made a good faith effort to determine the correct tax liability and subsection (c) provides that a taxpayer is considered to have made a good faith effort if it uses

ordinary business care and prudence. “A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge, and education.” 700.400(c)

Taxpayer, through its owner, JOHN DOE, admits that as a self employed business owner who did not have a bookkeeper, he neglected to forward returns and payments in a timely manner. Tr. pp. 5, 12 He also suggested that, although he once used an accountant, he no longer did, and some of the Department’s Notices of Tax Liability were sent to the accountant and it took a lengthy period of time for him to get these notices and then to reconcile his records with any returns that were filed and paid. Tr. pp. 5-6 All of the Notices of Tax Liability appear to have been issued on November 23, 1999 (Department Ex. No. 1, pp. 2-13) and Mr. DOE testified that he made full payment of the amounts shown due on those notices in February 2000. Tr. p. 8

As much as one may appreciate that Mr. DOE did not intend to evade the filing and payment of the taxes at issue, as small as those amounts were, grounds for the abatement of the penalties have not been provided. Being a small, self-employed business owner without additional bookkeeping assistance does not present itself as providing substantial grounds for the failure to timely file and pay necessary taxes that taxpayer was aware it was required to remit.

It is recognized that the penalties assessed are not inconsiderable. However, these penalties have been assessed pursuant to Illinois statute, and are not determined by the Department. In addition, these particular penalties could have been avoided 1) if taxpayer had timely filed the necessary returns and paid the taxes due, and 2) if the returns were filed within thirty days of the date of the Notices of Tax Liability. Mr. DOE

testified that he did not receive the Notices of Tax Liability timely, as they were mailed to his former accountant. Mr. DOE, however, did not support this testimony in any manner, and there is nothing of record for me to conclude that the Department did not properly send them.

WHEREFORE, for the reasons stated above, it is recommended that the Notices of Assessment be finalized as issued.

3/15/01

Mimi Brin
Administrative Law Judge